

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
FRED T. YATES, d.b.a.)
YATES MARINE SERVICE,)
Appellant,)
vs.)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
Respondent.)

PCHB No. 222

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

A formal hearing on the appeal of a \$1,000.00 penalty levied by respondent on appellant under the provisions of RCW 90.48.350, relating to oil spills on discharges into state waters, came on before the Board, William A. Gissberg presiding, on June 21, 1973 in Seattle, Washington. All members of the Board were present.

Appellant was present and represented by Richard G. McCann, his attorney. Respondent appeared through Charles W. Lean, Assistant Attorney General.

This formal hearing was preceded by an informal conference held

1 on May 30, 1973, in the law office of Richard G. McCann in Seattle,
2 Washington,, at which time appellant's attorney, Richard G. McCann
3 offered to abandon the appeal if respondent would accept \$100.00
4 as satisfaction of the penalty. Respondent later refused the offer.

5 Having heard the testimony and being fully advised, the Board
6 makes the following:

7 FINDINGS OF FACT

8 I.

9 At 12:00 noon on July 14, 1972, the manager of Yates Marine
10 Service, John Johnson, having boarded the vessel STIMSON which
11 was docked in the marina, noticed a severe list of said vessel about
12 15 degrees to port. The manager then lifted the floor plates and
13 observed a white liquid in the bilges. At the same time he smelled
14 Diesel oil.

15 II.

16 Following completion of an oil change of the vessel STIMSON'S
17 engines sometime between 3:30 p.m. and 4:00 p.m., the marina manager
18 checked the vessel's fuel tanks with a dip stick and found 600 gallons
19 of fuel oil in the port tank. The starboard tank was empty. The
20 bilge pump was started immediately and shortly thereafter, Steven Yates,
21 Jr. reported the presence of oil on the water in the area around
22 the discharge hose from the bilge pump to the marina manager.

23 III.

24 Personnel of appellant did pump oil and water from the bilge of the
25 vessel STIMSON into Portage Bay commencing about 4:00 p.m. on June 14,
26 1972 and continuing thereafter until 5:00 p.m. The pumping was not stopped

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1 at 5:00 p.m. but the length of time pumping was allowed to continue
2 after 5:00 p.m. was not clearly established by testimony.

3 The discharge of oil into the water was observed by two campus
4 policemen employed by the University of Washington. They reported such
5 to other officials but did not advise appellant's employees thereof.
6 Had they done so, most of the oil discharged would have been avoided.

7 IV.

8 The vessel STIMSON has a fuel capacity of 1,400 gallons held
9 in two tanks of 700 gallons capacity each located on the port and
10 starboard sides of the vessel respectively. Both tanks were topped
11 off on Saturday, June 10, 1972. Sometime between June 10 and June 15
12 the vessel was used to provide two cruises to groups of school
13 children, but was not refueled following the trips. It is estimated
14 that the vessel under movement consumes 6 gallons of Diesel oil per hour.
15 The two cruises used a total of approximately 30 gallons of fuel.

16 V.

17 The bilge pumps operate at constant speed and discharge fluid
18 at a rate of 10 gallons/minute as checked by the Coast Guard.

19 VI.

20 A sanitary engineer employed by the Department of Ecology did
21 on June 15, 1972, conduct an investigation of this oil spillage
22 incident of June 14, 1972, and found:

- 23 1. A cracked or broken valve on the starboard fuel tank and
24 a broken equalizing line between the starboard and port
25 fuel tanks.
26 2. Starboard tank empty.

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1 3. Port tank holding 600 gallons of fuel (Diesel oil).

2 VII.

3 The bilge water when sampled by the Department of Ecology's
4 sanitary engineer on June 15, 1972, was found to contain approximately
5 90% Diesel oil.

6 Two hundred seventy-five gallons of this fuel oil-water mixture
7 was pumped from the vessel's bilge into fifty-five gallon drums following
8 sampling.

9 VIII.

10 An accounting of the 1,400 gallons of Diesel oil loaded aboard the
11 vessel STIMSON on June 10, 1972, was provided by appellant as follows:

12 1400 gallons loaded
13 - 30 gallons consumed during two trips
14 1370 gallons provided school children
15 - 200 gallons estimated fuel oil in bilge water pumped
16 1170 gallons on July 15, 1972
17 - 600 gallons
18 570 gallons unaccounted for

16 IX.

17 That upon learning of the oil discharge, appellant took immediate
18 steps to contain and clean up the spill at considerable expense to it.

19 From which comes these:

20 CONCLUSIONS

21 I.

22 Pumping of the bilge on June 14, 1972, continued for at least an
23 hour and at a pumping rate of 10 gallons/minute as much as 540 gallons
24 (600 x 0.90) of Diesel oil could and was discharged into the waters of
25 the State in Portage Bay.

26 The accounting for the 1,400 gallons of Diesel loaded into the

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1 port and starboard tanks on June 10, 1972, provides a reasonable and
2 acceptable explanation for the loss of fuel oil because of pumping the
3 bilge and minor use for travel.

4 II.

5 A reasonably prudent man acting under similar circumstances would
6 have examined or observed the water at the point of the discharge from
7 the bilge pump hose. The failure of appellant's employees to do so
8 constitutes negligence. That negligence is imputable to appellant.

9 III.

10 The manager and an employee of the Yates Marine Service did not
11 have a legal duty to protect the vessel STIMSON but having volunteered
12 and undertaken to do so, subjected appellant to any responsibility or
13 consequences flowing therefrom.

14 IV.

15 Granting that the marina manager may have been acting in good faith,
16 nevertheless, he did negligently allow the discharge of oil into waters
17 of the State in a manner deemed to be unlawful by virtue of RCW 90.48.320.
18 Such negligence subjects Yates Marina Service to an appropriate penalty
19 under the provisions of RCW 90.48.350.

20 From which follows this:

21 ORDER

22 The appeal is denied but the penalty of \$1,000.00 seems excessive
23 for the violation in view of the facts of the case.

24 The matter is remanded to the Department of Ecology for reduction
25 of the penalty to \$500.00.

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1 DATED this 11th day of July, 1973.

2 POLLUTION CONTROL HEARINGS BOARD

3
4 WALT WOODWARD, Chairman

5 W. A. Gissberg
6 W. A. GISSBERG, Member

7 James T. Sheehy
8 JAMES T. SHEEHY, Member
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